

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROSE OBISPO,

USDC SDNY  
DOCUMENT  
**ELECTRONICALLY FILED**  
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DATE FILED: 2/18/2020

Plaintiff,

-against-

19-cv-2815 (LAK)

BRONX LEBANON HOSPITAL, et al.,

Defendants.

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**ORDER**

LEWIS A. KAPLAN, *District Judge.*

The government's motion for an order substituting the United States as the sole defendant, and dismissing the complaint for lack of subject matter jurisdiction (Dkt 6), is granted, substantially for the reasons set forth in the Report and Recommendation of Magistrate Judge Gabe W. Gorenstein. Plaintiff's objections are without merit and overruled.

Plaintiff objects that a December 30, 2005 HHS letter purporting to explain the scope of coverage under the Federal Tort Claims Act requires that for coverage to apply, a physician must "follow" a patient from an outpatient site to BLHC. But plaintiff has failed to offer a factually supported and legally sufficient explanation for how this letter is capable of adding requirements not found in the regulations that plaintiff concedes otherwise would extend coverage to defendants. In the absence of such an explanation, the Court is unwilling to ignore the applicable statutes, regulations, and policy manual from HHS, each of which makes clear that defendants are covered.

The Clerk shall close the case.

SO ORDERED.

Dated: February 16, 2020



Lewis A. Kaplan  
United States District Judge